

No. 1-15-0271

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MIDWEST UNIQUE APPAREL GROUP, INC., d/b/a)	Appeal from the Circuit Court of
THE UNIK SHOW,)	Cook County.
)	
Plaintiff-Appellee,)	
)	No. 12 CH 4525
v.)	
)	
MIDWEST UNIK SHOW, INC.,)	Honorable Thomas Allen,
)	Judge Presiding.
Defendant-Appellant.)	

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 **Held:** The trial court did not abuse its discretion in entering a permanent injunction against defendant: (1) for violating the Trademark Registration and Protection Act; (2) for violating the Deceptive Trade Practices Act; and (3) as a remedy under a common law unfair competition theory. The trial court’s determination that the defendant converted \$31,005 from the plaintiff was not against the manifest weight of the evidence.

¶ 2 The parties to this case are two corporations with a common history and purpose. The plaintiff-appellee Midwest Unique Apparel Group, Inc. (MUAG) runs shows for the apparel trade. It operates under the assumed business name “The Unik Show.” The defendant, Midwest

Unik Show, Inc. (MUS), is in the same business. It was formed by disaffected individuals who were originally affiliated with MUAG. After MUS began operating trade shows using “The Unik Show” name and logo, MUAG sued MUS on a variety of theories. After a full trial, the court entered a permanent injunction against MUS prohibiting it from using MUAG’s commercial identifiers, and imposed a \$31,005 judgment against MUS, finding that MUS had improperly converted that amount from MUAG. We affirm.

¶ 3 BACKGROUND

¶ 4 This case proceeded to trial on 14 counts of a 15-count complaint. The first three counts were statutory. Count 1 alleged defendant violated the Illinois Trademark Registration and Protection Act, 765 ILCS 1036 (West 2012) (Trademark Act). Count 2 alleged defendant violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510 (West 2012) (Deceptive Trade Practices Act). Before trial, defendant voluntarily dismissed count 3, which alleged the defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505 (West 2012).

¶ 5 The remaining counts sought relief under various common law tort theories. Count 4, for unfair competition; count 5, for tortious interference with business relations; and count 6, for conversion. Counts 7 through 15 sought damages for defamation.

¶ 6 Five persons testified at trial, all in the Korean language through an interpreter. The testimony of the three MUAG stockholders, Kwang Tae “Daniel” Ko, David Song, and Hee Joon Hwang, was essentially similar. In sum, their testimony established that they had long worked in a circle of Korean-American businesspersons involved in the apparel business. There was some concern in their peer group that Koreans would be better served by organizing to pool their resources and combat what some perceived as unprofessional apparel show management and an

anti-Korean bias regarding product placement at some shows. To that end, they formed a corporation named Chicago Apparel Group. However, they quickly changed the name to Midwest Unique Apparel Group, Inc., after receiving a complaint from a company with a name similar to that of Chicago Apparel Group. MUAG also filed an assumed name declaration establishing “Unik Show” as a “doing business” alter ego of MUAG. MUAG advertising featured a distinctive logo consisting of the word “Unik” in a curvilinear font with a stylized colon, printed in a different color, lodged between the letters “i” and “k.”

¶ 7 The testimony revealed that the three men had little knowledge of the intricacies of Illinois law pertaining to operation of corporations. They used a certified public accountant, rather than an attorney, to prepare corporate papers. The original intent of the businesspersons was to form a not-for-profit consortium of sorts, but instead the three stockholders formed a for-profit corporation (at least on paper) with the three of them as equal shareholders. The corporation issued stock certificates showing that each owned 3,333 shares of MUAG. Song was named as president. Other than minutes of an initial meeting and the stock certificates, there was little evidence that the corporation ever followed any other formal procedures of corporate administration.

¶ 8 At some point, a dispute arose over Song’s management of MUAG. One of the differences was grounded in the shareholders’ desire to bring in non-Korean businesspersons to work with the shows. Song appeared at a meeting of Korean-American businesses at the Twin Dragons restaurant which was attended by many of the persons involved in the group which decided to form MUAG in the first instance. At the meeting, Song gave a speech, entirely in Korean, which was partially tape-recorded. While the recording is preserved in the record and was played to the trial court, there is some dispute over whether it was edited so as to remove

specific portions of audio. The record also contains two competing translations of the recording. In light of these facts, we, like the trial court, will primarily rely on the testimony of the witnesses to discern what occurred at the Twin Dragons meeting.

¶ 9 Regardless of which translation more accurately characterizes Song's speech, it is clear that at the meeting, Song expressed strong frustration with the opposition to MUAG's operational plan and stated that he was, to paraphrase, "getting too old for this." Accordingly, he stated, those present could go ahead and run the enterprise as they saw fit if they really wanted to. Song testified that he did not resign as president at the meeting but made doing so "optional," in the sense that he would turn things over to others if the group asked him to. A MUS representative, June Wang Kim, testified that Song did, in fact, resign. The record contains no documentation of any election of a new president by the MUAG shareholders or board of directors. Around the same time, MUAG was planning an apparel show under the name of Unik Show to be held at the White Eagle restaurant in Niles, Illinois.

¶ 10 Seung Yun Lee testified that she is a trade show coordinator for MUAG. She stated that while working at the office, Kim came in and demanded in a loud and cursing tone that she give him the folder containing materials for the show because he was now in charge of MUAG. She was surprised by this confrontation, but complied with Kim's request out of culturally-based deference to an elder. The three shareholders never gave permission for Lee to give Kim the folder, which contained vendor checks, nor for Kim to use or take the checks in any way. MUAG went ahead and held the show at the White Eagle despite the fact that Kim had taken the attending vendors' payment checks from the MUAG office. After Kim refused to return the checks, the three shareholders personally covered the expenses of the show, which was mostly attributable to facility rental and food bills owed to the White Eagle.

¶ 11 Kim, the president of defendant MUS, testified both as an adverse witness for the plaintiff and again in defendant's case-in-chief. He claimed that he and others took over MUAG upon Song's resignation. He stated that the original organization was to be a non-profit Korean-American business association operating for the common good of its affiliate members, and that the failure to establish it in that manner was one of the complaints of the disaffected individuals. He had understood that MUAG was to be run on a non-profit basis, but Song created it differently because of alleged legal difficulties with Illinois non-profit corporation law. After Song's purported resignation, Kim and his allies created MUS because the MUAG stockholders would not relinquish control of MUAG and he needed an appropriate vehicle under which to open a bank account to accept the checks. Accordingly, Kim opened the new bank account, deposited the checks he took from Lee in the account, and proceeded to host the competing show at Bee Sales, also located in Niles, running on the same series of days as MUAG's show at the White Eagle. The show took place at Bee Sales because the MUAG shareholders had already booked the White Eagle. Believing his status as a member of the Unik Show allowed him to do so, he also authorized advertisements with the MUAG logo indicating that the White Eagle show would now be held at Bee Sales. At the time, he knew that the logo belonged to MUAG. MUS was dissolved after the trial court entered a temporary restraining order in this case; it was replaced by a new corporation, Mega Show, Inc.

¶ 12 Early on, MUAG created a set of by-laws which are not corporate by-laws as such, but instead were intended to establish ground rules for the running of the periodic Unik shows, the distribution of any show profits, and the role of show "members." These by-laws provide, among other things, that the "Unik Show shall not be managed for the benefit of any other organizations or any individuals."

¶ 13 In his closing argument, counsel for defendant explained its theory of the case: Song had resigned and essentially turned over MUAG to the disaffected members who created MUS. In particular, he argued that the by-laws established an informal consortium consisting of all the individuals involved, such that the MUS group could take over the enterprise and use the Unik Show name and logo without further interference from the MUAG shareholders, who had committed a “corporate hijacking” by not turning over control to the MUS group.

¶ 14 The trial court entered judgment in favor of plaintiff on counts 1, 2, 4, and 6. On count 1, the court first determined there was no evidence that any MUAG mark was duly registered under section 15 of the Trademark Act (765 ILCS 1036/1 (West 2012)). Consequently, the court did not grant any relief under section 60 of the Trademark Act for infringement of a registered mark. Instead, the court granted relief based on section 65 of the Trademark Act, which allows a court to impose an injunction when an unregistered mark has been used without authorization and that use “dilut[es] the distinctive quality of the mark.” 765 ILCS 1036/65(a) (West 2012). When considering a section 65(a) claim, the court considers a number of statutory factors. The court found that the evidence supported a finding that MUS’s dilution of the MUAG name and logo satisfied many of these factors, including factor (4), “the geographical extent of the trading area in which the mark is used”; factor (5), “the channels of trade for the goods or services with which the mark is used”; and factor (6), “the degree of recognition of the mark in the trading areas and channels of trade in this State used by the mark's owner and the person against whom the injunction is sought”. Accordingly, the court enjoined MUS from, among other things, using the trade names MUS or “The Unik Show.”

¶ 15 The court found that the same evidence supported a finding for plaintiff on count 2 for defendant’s violation of the Deceptive Trade Practices Act. The court found that MUS’s actions

violated several provisions of section 2(a) of that law, which provide that a person engages in a deceptive practice when, in the course of business, he “passes off goods or services as those of another,” “causes likelihood of confusion” regarding the source of the goods or regarding the goods’ affiliation or connection with another entity. 815 ILCS 510/2(a) (West 2012). However, the court determined that it would grant no additional injunctive relief under count 2 other than that already granted under count 1.

¶ 16 The court noted that count 4 was largely duplicative of count 2, as the Deceptive Trade Practices Act essentially codified the common law unfair competition doctrine. Accordingly, the court adopted its findings regarding count 2 as to count 4, but again granted no additional relief on that count.

¶ 17 Despite ruling for plaintiff on counts 1 and 2, the court denied the plaintiff’s request for attorney fees under section 3 of the Deceptive Trade Practices Act (815 ILCS 510/3 (West 2014)) and under section 70 of the Trademark Act (765 ILCS 1036/70 (West 2014)). The first statute allows the court, in its discretion to award fees if the court finds that the defendant committed the wrongful acts “with knowledge or in bad faith.” The second provides that the court “may” impose attorney fees only if the court finds that the defendant’s actions were wilful. The court summarized the evidence at length and explained that it supported a conclusion that the dispute was “like a bad marriage” which arose from lack of knowledge and understanding by those involved, rather than through wilful misconduct.

¶ 18 The court ruled in favor of defendant on count 5, finding that the defendant’s actions did not rise to the level of wilfulness required for a successful tortious interference claim. The court did, however, find for plaintiff on count 6, because the evidence demonstrated that Kim, acting on behalf of MUS, had improperly converted the \$31,005 in checks which rightfully belonged to

the plaintiff. The court entered judgment in that amount in favor of plaintiff. The court further found that the evidence did not support any finding of defamation, so it resolved counts 7 through 15 in favor of defendant. The defendant now appeals the adverse judgments on the four counts it lost. The plaintiff has not cross-appealed the judgments in favor of defendant on the other ten counts, nor the court's denial of particular relief regarding the other four counts.

¶ 19

ANALYSIS

¶ 20 On appeal, MUS presents a novel but unconvincing theory. MUS's theory is that the defendants did no wrong because the Unik Show by-laws essentially supplanted the corporate structure of MUAG. MUS bootstraps this by-law theory into an argument that Kim and those involved with MUS are third-party beneficiaries with the right to constitute themselves as MUAG whenever they wanted. Similarly, reversing the usual "pierce the corporate veil" strategy, MUS argues that MUAG should not be viewed as a for-profit corporation governed by its shareholders but instead like an unincorporated association, under which members, rather than stockholders, freely associate for a common purpose and make decisions collectively. In response, MUAG argues that MUS waived these arguments by not presenting them at trial. We choose to address them on the merits because they were basically the main theme of MUS's closing argument after the trial. While defendant's closing argument did not neatly label its theory under the rubric of "third party beneficiary," it touched on the same themes as those presented before us.

¶ 21 The trial court specifically found that Song never resigned as president of MUAG. There was somewhat conflicting evidence regarding what Song said at the Twin Dragon meeting. Resolving this credibility dispute was wholly within the province of the trial court. *People v.*

Parcel of Prop. Commonly Known as 1945 N. 31st St., Decatur, Macon County, Illinois, 217 Ill. 2d 481, 507 (2005).

¶ 22 Having resolved that factual dispute, the trial court characterized its rejection of the third-party beneficiary argument in the following apt terms: “But it’s not a not-for-profit. You can say it a hundred times. You can dream it. You can hope it. You can wish it. It’s not a not-for-profit.” We agree. The evidence showed that MUAG was formed as an Illinois *for-profit* corporation. As such, its corporate structure, including election of officers, was ultimately governed by the will of the three stockholders acting through the board of directors, and not that of the business community in the aggregate. See, *e.g.*, *Gidwitz v. Lanzit Corrugated Box Co.*, 20 Ill. 2d 208, 215. While all of those involved conflated the roles of officer, director, shareholder, auditor, and member, the bottom line was that MUAG was a for-profit corporation under Illinois law and its rights must be analyzed from that perspective. Accordingly, the trial court did not err in rejecting the MUS third-party beneficiary theory.

¶ 23 Having rejected MUS’s third-party beneficiary defense, we will review the court’s factual findings regarding the basic facts supporting Trademark Law and Deceptive Trade Practice Act violations under a manifest weight of the evidence standard. *Id.* As explained above, the evidence that MUS used the Unik Show name and logo and did so without authorization was undisputed. Accordingly, the court’s findings of fact establishing violations of the two laws and on the common law unfair competition claim could not have been against the manifest weight of the evidence.

¶ 24 MUS has suggested nothing, other than its third-party beneficiary defense, explaining why we should reverse the injunctions prohibiting it from using the Unik Show name or logo. We review the imposition of a permanent injunction under the abuse of discretion standard.

County of Kendall v. Rosenwinkel, 353 Ill. App. 3d 529, 541 (2004). An injunction is a specifically-authorized remedy for misuse of a commercial name and mark, and we can discern no other remedy that would have granted MUAG effective relief. See 765 ILCS 1036/65 (injunctive relief under Trademark Act); 815 ILCS 510/3 (injunctive relief under Deceptive Practices Act). Accordingly, we cannot find that the court abused its discretion by entering the injunction against MUS on counts 1, 2 and 4.

¶ 25 Our supreme court has held that to “ ‘prove conversion, a plaintiff must establish that (1) he has a right to the property; (2) he has an absolute and unconditional right to the immediate possession of the property; (3) he made a demand for possession; and (4) the defendant wrongfully and without authorization assumed control, dominion, or ownership over the property.’ ” *Loman v. Freeman*, 229 Ill. 2d 104, 127 (2008) (quoting *Cirrinzione v. Johnson*, 184 Ill. 2d 109, 114 (1998)). In a bench trial, the trial court has the primary obligation to weigh evidence and determine disputed issues of fact, and we must defer to those findings of fact unless they are against the manifest weight of the evidence. *Klaskin v. Klepak*, 126 Ill. 2d 376, 389 (1989). Putting aside the third-party beneficiary defense, we are left with basically undisputed evidence that MUAG had the right to the vendor checks, demanded them back, and that MUS wrongfully assumed control over them by depositing them in its own account. Accordingly, the court properly imposed judgment for the amount of the wrongfully acquired MUAG checks.

¶ 26 **CONCLUSION**

¶ 27 The trial court did not abuse its discretion in entering an injunction against MUS on counts 1, 2 and 4, and its finding that MUS converted \$31,005 from MUAG was not against the manifest weight of the evidence. Accordingly, we affirm the judgments below.

¶ 28 Affirmed.